

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CONSIST SOFTWARE SOLUTIONS, INC.,

Plaintiff,

07 Civ. 7047 (CM)

-against-

SOFTWARE A.G., INC., et al.,

Defendants.

RESPONSE TO CORRESPONDENCE

McMahon, J.:

As I am presently on trial, I must respond to the most recent correspondence in writing.

The issue to be tried next month is whether Consist will continue as a distributor for Software AG products after January 1, 2008, or whether Software AG has succeeded in terminating the parties' contractual relationship. Software AG has argued that, even if I agree with Consist's interpretation of Sections 1 and 7 of the Agreement (the "nonrenewal" interpretation), Consist has committed material breaches of contract, such that the Agreement can be terminated under New York law. I thus disagree with Consist's repeated insistence that the only issue to be tried is the contract interpretation question; the question of whether the contract has been terminated is broader than the issue of non-renewal.¹

By 2 PM tomorrow, Software AG must identify, in writing, any and every instance of material breach that (in its view) justifies termination of the contract. Software AG must also identify, and provide the court with a copy of, any document that allegedly constitutes notice of the breach, thereby triggering the contractual day cure period. Absent that information, there is no way that I can rule on the parties' rather uninformative and incomprehensible arguments about the relevance of financial statements. If Software AG thinks it has provided this information previously, I am constrained to disagree. I have been repeatedly sent long letters identifying particular breaches as "Among the breaches claimed by Software AG," but I have never been given a comprehensive list of what those breaches are. I want a final and binding list of the

¹ Because it will not be necessary to hear evidence about the alleged material breaches if I agree with Software AG's interpretation of the non-renewal provision, I want to hear that evidence first. However, the parties need to be ready to go forward on the "material breach" issue.

alleged breaches and I want it now.

Dated: November 26, 2007

A handwritten signature in black ink, appearing to read "Cullen McNeil", written in a cursive style.

U.S.D.J.

BY ECF TO ALL COUNSEL